

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
DIRECTV Enterprises, Inc.
Application to Launch and Operate a
Direct Broadcast Satellite Service
Space Station
File No. SAT-LOA-20010518-00045

ORDER AND AUTHORIZATION

Adopted: October 25, 2001

Released: October 26, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we grant DIRECTV Enterprises, Inc. (DIRECTV) authority to launch and operate a direct broadcast satellite (DBS), DIRECTV 4S, and co-locate it with DIRECTV's existing network of satellites at the 101° W.L. orbital location. This authorization will allow DIRECTV to use its frequencies at 101° W.L. more efficiently and expand its programming options, thereby serving the public interest.

II. BACKGROUND

2. DIRECTV provides DBS service to U.S. consumers from the 101° W.L., 110° W.L., and 119° W.L. orbital locations. DIRECTV now seeks to launch and operate a new satellite, DIRECTV 4S, and collocate it with its DIRECTV 2, 3, and 1R satellites at 101° W.L. DIRECTV states that DIRECTV 2 is currently located at 100.8° W.L., DIRECTV 3 at 100.85° W.L., and DIRECTV 1R at 101.2° W.L. DIRECTV plans to launch DIRECTV 4S to the 101.2° orbit location and relocate DIRECTV 1R to 101.15° W.L. DIRECTV explains that DIRECTV 4S is a spot beam satellite, which it intends to use to provide additional local broadcast channel capacity for its existing DBS system.

1 DIRECTV Application at 1.
2 DIRECTV Application at 1.
3 DIRECTV Application at 4.
4 DIRECTV Application at 4.
5 DIRECTV Application at 4.

3. We placed DIRECTV's application on public notice on June 19, 2001.<sup>6</sup> The State of Hawaii (Hawaii) filed a petition to deny DIRECTV's application on July 19, 2001. Hawaii claims that DIRECTV's service in Hawaii is not comparable with DBS programming available in the rest of the country and not comparable with cable television service in Hawaii.<sup>7</sup> On August 10, 2001, DIRECTV filed an opposition to Hawaii's petition, claiming that its service to Hawaii complies with the Commission's rules.<sup>8</sup> Hawaii filed a reply on August 16, 2001.

4. On July 19, 2001, Northpoint Technology, Ltd. and Broadwave USA, Inc. (Northpoint) filed a petition to stay action on DIRECTV's application, asserting that DIRECTV has not made all the technical data in its application publicly available.<sup>9</sup> That information was subsequently provided to Northpoint, and Northpoint withdrew its petition on September 14, 2001.<sup>10</sup> Accordingly, we need not address Northpoint's pleadings, or DIRECTV's pleadings in response.

### III. DISCUSSION

#### A. Public Interest

5. We find that granting DIRECTV's application is in the public interest. DIRECTV 4S will allow DIRECTV to increase and improve its service offerings to consumers. Furthermore, the increased efficiency and capacity will enable DIRECTV to offer additional programming, including local-into-local channels. This will provide greater competition to incumbent cable television providers.

6. In considering DIRECTV's application, we must evaluate its interference potential to other DBS permittees and to the radiocommunications systems of other countries. In particular, we must determine whether the DIRECTV 4S satellite will be operated in accordance with Appendices S30 and S30A of the International Telecommunication Union (ITU) Radio Regulations. Because the technical parameters of DIRECTV's DBS system vary from those set forth for U.S. assignments in the Region 2

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<sup>6</sup> Satellite Policy Branch Information, Report No. SAT-00073, *Public Notice* (released June 19, 2001).

<sup>7</sup> Hawaii Petition at 3-5.

<sup>8</sup> DIRECTV submitted a motion for extension of time on August 3, 2001, claiming that it did not learn of Hawaii's opposition until after the date for oppositions had passed. According to DIRECTV, when Hawaii sent its comments to DIRECTV, it addressed its letter to DIRECTV's Executive Vice President in Los Angeles, California, care of DIRECTV's counsel in Washington, D.C. DIRECTV claims further that learned of Hawaii's opposition through Commission staff. DIRECTV Motion at 1. DIRECTV request permission to file its opposition to Hawaii's petition on August 10, 2001. DIRECTV Motion at 1. It is the policy of the Commission that motions for extension of time shall not be granted routinely. 47 C.F.R. § 1.46(a). However, in this case, we conclude that DIRECTV has provided sufficient justification, and we grant its requested extension.

<sup>9</sup> Northpoint Petition 1-2.

<sup>10</sup> Letter from J.C. Rozendaal, Counsel for Northpoint, to Magalie Roman Salas, Secretary, Secretary, FCC (dated Sept. 14, 2001).

broadcasting satellite service (BSS) plans and its associated Feeder Link Plan,<sup>11</sup> the Commission must request modification of the Region 2 BSS Plan and its associated Feeder Link Plan for the DIRECTV 4S satellite.<sup>12</sup> Annex 1 of Appendices S30 and S30A provide the methodology and criteria for determining whether a proposed satellite system (*i.e.*, a proposed modification to the Plan) might interfere with frequency assignments in accordance with the Region 2 BSS Plan and its associated Feeder Link Plan, other satellite systems, or terrestrial services.<sup>13</sup> If the limits in Annex 1 are exceeded, the system must be coordinated with the affected systems or services.

7. Upon reviewing DIRECTV's application, we find sufficient evidence to determine that DIRECTV 4S will not cause unacceptable interference to other U.S. DBS systems. DIRECTV has submitted analyses to demonstrate that DIRECTV 4S will not cause unacceptable interference to the radiocommunications systems of other countries that provide service to the United States.<sup>14</sup> Based on DIRECTV's submission, we find that DIRECTV 4S will not cause unacceptable interference to any test point of any Canadian DBS system located within Canada. Although DIRECTV 4S will affect some Canadian DBS system test points located in the United States, we note that Canadian systems are not currently authorized to provide DBS service in the United States. Pursuant to the World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement), the United States made market access commitments for fixed satellite services, but did not make market access commitments for DBS, Direct-to-Home (DTH) service, and Digital Audio Radio Service (DARS), and took a most favored nation (MFN) exemption for these services as well.<sup>15</sup> Accordingly, we find that DIRECTV has demonstrated compliance with Annex 1.<sup>16</sup>

8. Nevertheless, we remind DIRECTV that its satellite operations are not guaranteed protection from interference from systems licensed by other Administrations operating in accordance with the ITU Radio Regulations until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include

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<sup>11</sup> Region 2 includes North, South, and Central America. Unless referring specifically to the Region 2 BSS Plan and its associated Feeder Link Plan, in the United States the term "DBS" is used interchangeably with "BSS."

<sup>12</sup> Some of these varying parameters include type of emission, size of receive dish antennas and the use of spot beams.

<sup>13</sup> See International Telecommunication Union Radio Regulations, Appendices S30 and S30A.

<sup>14</sup> DIRECTV Application at App. A.

<sup>15</sup> Generally, GATS requires WTO Member Nations to afford MFN treatment to all other WTO Member Nations. "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country." GATS Article II, para. 1. Member nations are permitted to take "MFN exemptions," however, under certain circumstances specified in an annex to GATS. See GATS Annex on Article II Exemptions.

<sup>16</sup> If we allow Canadian DBS systems to provide service in the United States in the future, we will determine what, if anything, DIRECTV must do to protect Canadian test points located within the United States at that time.

the technical parameters of DIRECTV 4S. Further, we condition operation of DIRECTV 4S such that, until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include DIRECTV 4S's parameters, it shall not cause greater interference than that which would occur from the current USA Plan assignments at 101° W.L. to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations. DIRECTV will be expected to provide continuing documentation, as necessary, for either the coordination or agreement-seeking process.<sup>17</sup>

9. As explained further below, we conclude that none of the public interest concerns raised by Hawaii warrant denying DIRECTV's application, as they will be addressed in a later proceeding.

## B. Service to Hawaii

10. *Pleadings.* Hawaii claims that DIRECTV is not in compliance with Section 307(b) of the Communications Act of 1934 (Act) and Section 100.53 of the Commission's rules because DIRECTV offers inferior service to Hawaii relative to the service it offers to the rest of the country.<sup>18</sup> Hawaii requests that we deny DIRECTV's application and instruct it to file a new application that it argues would enable DIRECTV to provide service to Hawaiian customers comparable to the service DIRECTV offers to the rest of the country.<sup>19</sup> DIRECTV responds that issues relating to DBS operators' geographic service requirements should be addressed in the *Part 100* proceeding rather than in the context of this license application.<sup>20</sup>

11. Hawaii also notes that, in the *Part 100* rulemaking proceeding, the Commission has invited comment on the DBS geographic service requirements.<sup>21</sup> Hawaii requests that the Commission require DBS operators to provide "full service" to Hawaii in the rulemaking proceeding.<sup>22</sup> In addition, as an alternative to denying DIRECTV's application, Hawaii requests that we delay action on DIRECTV's

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<sup>17</sup> This includes, but is not limited to, the submission of any information or analyses necessary for completing the Plan modification process. Modifications of the BSS Plans are expected not only to continue, but also to increase, in the future. Accordingly, DIRECTV may be required to assist the Commission in future cases in which it must coordinate with or grant agreement to the administrations of later implemented systems regarding DIRECTV's network.

<sup>18</sup> Hawaii Petition at 3-5, Hawaii Reply at 3-6. Section 307(b) of the Act states that the Commission shall issue licenses in a way that provides a "fair, efficient, and equitable" distribution of radio services to the States, insofar as there is demand for those services. 47 U.S.C. § 307(b). Section 100.53 of the Commission's rules requires DBS operators to provide service to Alaska and Hawaii or relinquish their orbital assignments at the following locations: 148° W.L., 157° W.L., 166° W.L., and 175° W.L.

<sup>19</sup> Hawaii Petition at 5-6.

<sup>20</sup> DIRECTV August 10 Opposition at 1-5.

<sup>21</sup> Hawaii Petition at 6, *citing* Policies and Rules for the Direct Broadcast Satellite Service, *Notice of Proposed Rulemaking*, IB Docket No. 98-21, 13 FCC Rcd 6907, 6926 (para. 33) (1998).

<sup>22</sup> Hawaii Petition at 6.

application pending completion of the rulemaking.<sup>23</sup> DIRECTV opposes delaying action on its application because it argues that it needs the capacity on DIRECTV 4S to comply with requirements of the Satellite Home Viewer Improvement Act of 1999 (SHVIA) that take effect on January 1, 2002.<sup>24</sup> In addition, DIRECTV maintains that denying its application would harm all DIRECTV subscribers, including those in Hawaii, without any public interest benefit.<sup>25</sup> Hawaii replies that DIRECTV does not plan to launch another satellite until 2006, and so it is important to require DIRECTV to improve its service to Hawaii now.<sup>26</sup> Hawaii also contends that SHVIA does not give DBS operators a right to provide what Hawaii claims is inadequate service to Hawaii.<sup>27</sup>

12. *Discussion.* We deny Hawaii's petition. In the *DIRECTV 5 Order*, Hawaii raised many of the same issues it raises here.<sup>28</sup> We observed in that Order that the issue of whether the geographic rules require service to Alaska and Hawaii to be equal or comparable to that in the contiguous United States was also raised in the *Part 100* proceeding.<sup>29</sup> We also determined that the *Part 100* proceeding is the proper venue to resolve these matters.<sup>30</sup> In addition, we noted that requiring DIRECTV to reschedule its launch would impose a serious financial burden on DIRECTV, which would ultimately be passed on to its subscribers.<sup>31</sup> Finally, we emphasized that we would continue to monitor DIRECTV's compliance with the geographic service rules, and that DIRECTV would be required to revise its service offerings if the Commission finds Hawaii's arguments persuasive in the *Part 100* proceeding.<sup>32</sup> We are confident that, in the event that the Commission is persuaded by Hawaii's arguments, it will be able to take actions to require DIRECTV to upgrade its service offerings in Hawaii at that time. Therefore, we conclude that requiring DIRECTV to incur the costs of rescheduling its launch is not warranted in this case. Accordingly, we reject Hawaii's arguments in this proceeding for the same reasons that we rejected them in the *DIRECTV 5 Order*, and will carefully consider the issue of service to Hawaii in our rulemaking. We note, however, that

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<sup>23</sup> Hawaii Petition at 6-7.

<sup>24</sup> DIRECTV August 10 Opposition at 3, *citing* Implementation of the Satellite Home Viewer Improvement Act of 1999, *Report and Order*, CS Docket No. 00-96, 16 FCC Rcd 1918 (2000) (implementing SHVIA must-carry requirements).

<sup>25</sup> DIRECTV August 10 Opposition at 6.

<sup>26</sup> Hawaii Reply at 3.

<sup>27</sup> Hawaii Reply at 6.

<sup>28</sup> See DIRECTV Enterprises, Inc., *Order and Authorization*, 15 FCC Rcd 23630, 23632 (para. 7) (Int'l Bur., Sat. and Rad. Div., 2000) (*DIRECTV 5 Order*).

<sup>29</sup> *DIRECTV 5 Order*, 15 FCC Rcd at 23634 (para. 11).

<sup>30</sup> *DIRECTV 5 Order*, 15 FCC Rcd at 23634 (para. 11).

<sup>31</sup> *DIRECTV 5 Order*, 15 FCC Rcd at 23634 (para. 11).

<sup>32</sup> *DIRECTV 5 Order*, 15 FCC Rcd at 23634 (para. 11).

DIRECTV's decision to provide local-into-local service does not excuse DIRECTV from its service obligations to Hawaii.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, that DIRECTV Enterprises, Inc., File No. SAT-LOA-20010518-00045, IS GRANTED, and DIRECTV Enterprises, Inc. IS AUTHORIZED to launch and operate its satellite, DIRECTV 4S, at the 101° W.L. orbit location in accordance with the terms, representations, and technical specifications set forth in its application.

14. IT IS FURTHER ORDERED that the motion for extension of time filed by DIRECTV Enterprises, Inc. on August 3, 2001 IS GRANTED.

15. IT IS FURTHER ORDERED that the petition to deny filed by the State of Hawaii on July 19, 2001 IS DENIED.

16. IT IS FURTHER ORDERED that the authorization granted in this Order is subject to the following conditions: (1) until the International Telecommunication Union (ITU) Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of DIRECTV 4S and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BBS Plan at 101° W.L. to other BSS or other services or satellite systems operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other administrations is guaranteed to DIRECTV 4S unless and until Appendices S30 and S30A plan modification procedures are successfully and timely completed.

17. IT IS FURTHER ORDERED that DIRECTV Enterprises, Inc. SHALL coordinate all transfer orbit Telemetry, Tracking, and Control (TT&C) operations with other potentially affected in-orbit DBS operators.

18. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau

